STATE OF MICHIGAN

COURT OF APPEALS

HURON VALLEY NIGHT HAWKS,

Plaintiff-Counterdefendant-Appellant,

v

TOWNSHIP OF MANCHESTER,

Defendant-Counterplaintiff-Appellee.

UNPUBLISHED
March 10, 2005

No. 251643
Washtenaw Circuit Court
LC No. 01-000210-CE

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

PER CURIAM.

In this action for a declaratory judgment as well as for damages for trespass, plaintiff appeals as of right from an order of the trial court granting defendant's motion for summary disposition on the grounds that the issues raised by plaintiff were barred by the doctrines of collateral estoppel and res judicata, that plaintiff could not collaterally attack prior orders and judgments of the trial court, and that defendant was entitled to a judgment as a matter of law on its counter-claim. We affirm.

I. FACTS

Plaintiff is a non-profit organization that owns a piece of land, which it uses for recreational activities, including motorcycle racing and off-road motorcycle riding. The dispute between the parties has been subject to litigation since 1967. That year, defendant township filed suit alleging that plaintiff's activities on the land constituted a public nuisance and violated the township zoning ordinance. A consent judgment was entered under which plaintiff was allowed to use the land for motorcycle events under certain restrictions.

In 1987, the relationship between plaintiff and the township became strained, as the township objected to plaintiff's desire to hold 18 sanctioned motorcycle events for the 1987 season. The township filed a motion for an order to show cause and to amend and revise the 1969 order. The township specifically alleged that plaintiff violated the order by using loudspeakers at unauthorized times and that it failed to erect fences on the land, and asked that

the court amend its order to limit plaintiff to holding seven sanctioned motorcycle events per year. After an evidentiary hearing, the court amended the order to limit plaintiff to holding four events.[1]

In 1998, defendant township passed a new zoning ordinance under which plaintiff's land was zoned as rural agriculture.

In 1999, defendant township again filed a motion to show cause, alleging that plaintiff was in violation of the 1969 order, as amended by the 1987 order, by holding more than four motorcycle events. Plaintiff argued that the nature of the events had changed and that they should no longer be subject to the limit of four events. The court disagreed and issued a contempt judgment and enjoined plaintiff's from using the land beyond the limitations of the prior court orders. Plaintiff appealed to this Court; however, we dismissed for lack of jurisdiction on the grounds that the trial court's order was not a final order.

On February 21, 2001, plaintiff filed the present action. Count one of plaintiff's complaint sought a declaratory judgment that the term "sanctioned Moto Cross events" as used in the 1969 order, as amended, did not cover any activities other than moto cross races sanctioned by a recognized sanctioning body, such as the American Motorcyclist Association, and did not include purely recreation riding, and also a declaration that plaintiff's use of the land before the adoption of the 1998 zoning ordinance was lawful at the time and therefore may continue.[2] Defendant filed a counter-complaint alleging that plaintiff abandoned its nonconforming use of the land after 1987, and in 1994 began using the land in violation of the zoning ordinance and beyond the scope of the nonconforming use.

Defendant moved to dismiss plaintiff's claim for declaratory relief on the grounds that such would be precluded by the doctrines of res judicata and collateral estoppel. Defendant also sought a summary disposition on its counterclaim arguing that no issue of material fact existed regarding whether plaintiff's activities violated defendant's ordinance. The court agreed and granted both of defendant's motion.

II. PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF

Plaintiff argues that the court erred in holding that its complaint for declaratory relief constituted an improper collateral attack on a prior judgment. We disagree.

---

[1] This order was reversed in part by this Court in *Township of Manchester v Huron Valley Night Hawks, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued October 23, 1990 (Docket No. 104356).

[2] Plaintiff also stated a cause of action against individual defendants and the township for trespass. However the trespass issue is not raised in this appeal.

A. Standard of Review

Trial court's decision on a summary disposition motion is reviewed by this Court de novo. *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999).

B. Analysis

The decision of a court having jurisdiction is final when not appealed and cannot be collaterally attacked. *SS Aircraft v Piper Aircraft*, 159 Mich App 389, 393; 406 NW2d 304 (1987). This rule applies to both orders and judgments. *Id.; Stewart v Michigan Bell Telephone Co*, 39 Mich App 360, 369; 197 NW2d 465 (1972).

Plaintiff's prayer for relief seeks a declaration that its activities in 1999 and prior thereto did not violate either the court order issued in the 1967 case, as amended, or defendant's 1998 zoning ordnance. However, the court's contempt judgment of 1999 found specifically to the contrary, that plaintiff as in violation of the 1969 order, as amended. Accordingly, from the complaint, it is clear that plaintiff is seeking to collaterally attack the findings in the contempt judgment.

Plaintiff's primary argument is that the contempt judgment of 1999 is not subject to the prohibition on collateral attacks because it does not represent a final order under MCR 7.202(7)(a) and is therefore not appealable. Defendant does not argue with plaintiff's contention that the contempt judgment is not a final order under MCR 7.202(7)(a), and this Court dismissed plaintiff's appeal of that order on the grounds that such an order, not being a final order under MCR 7.202(7)(a), was not appealable as of right to this Court. The flaw in plaintiff's argument is that it fails to explain how this has any effect on the general prohibition on collateral attacks. Plaintiff is arguing, in essence, that non-final orders or judgments, as outlined in MCR 7.202(7)(a), are subject to collateral attack. However, plaintiff has failed to present any authority in support of its contention. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position,'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959), nor may a party give issues cursory treatment with little or no citation of supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Plaintiff's failure to properly address the merits of its assertion of error constitutes abandonment of the issue. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003); *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Plaintiff also argues that its claim that its activities did not violate the 1998 zoning ordinance was not litigated in the context of the 1999 order, and is therefore not protected by the prohibition on collateral attacks. However, *res judicata* will bar a second subsequent action between the same parties not only if the matter was litigated in the first case, but also if the matter could have been litigated in the first case. *Bergeron v Busch*, 228 Mich App 618, 620 (1998). The contempt order was not issued until after the passage of the ordinance. Accordingly, this is an issue which could have been raised within the contempt proceedings. Therefore, under

the general principles of *res judicata*, this action is barred. Plaintiff fails to present any argument as to why the general rule should not apply here.

III. VIOLATION OF ZONING ORDINANCE

Next plaintiff argues that the court erred in granting summary disposition on the question of violation of the zoning ordinance because questions of material facts remain. We disagree.

Plaintiff's property is located in a zone designated as "AR," or a rural agricultural district. Of the permitted uses of land designated as AR, plaintiff asserts that its use complies with § 5.02(H), which provides:

> The following buildings and structures, and uses of parcels, lots, buildings and structures are permitted in this district:
>
> * * *
>
> Public and private recreation areas such as a forest preserve, wildlife sanctuary or similar low intensity use. [Manchester Township Zoning Ordinance, § 5.02(H).]

Attached to plaintiff's brief in support of summary disposition was the deposition of Shawn M. Bagso, a member of plaintiff. He identified a number of schedules and photographs taken from plaintiff's website. The schedule indicated twenty-five scheduled events for 2001 where motorcycles were to be driven on the property. Also shown were a number of photographs showing motorcycles driving around the property, many of which showed the motorcycles airborne.

Relying on this evidence, the trial court simply concluded:

> A human presence involving a large number of people using motorcycles, all terrain vehicles and other internal combustion engine-driven vehicles is completely incompatible with the minimal noise and activity levels of forest preserves and wildlife sanctuaries. Their use of the property is not permitted under this subsection of the ordinance.

There is simply no evidence that contradicts the court's findings that plaintiff's use of the land included a human presence involving a large number of people using motorcycles and other vehicles. Moreover, we find that as a matter of law, the ordinance is unambiguous and that plaintiff's use does not fall within it as it is not a low intensive use of land similar to a forest preserve or wildlife sanctuary.

Plaintiff argues that having motorcycles on the track once a week for 5 or 6 hours a day is not an "intensive use" under the ordinance. However, plaintiff's reading ignores half of the ordinance. When a court reads an ordinance, it must give effect to every clause and every sentence. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). The ordinance qualifies the term "low intensity use" by adding that it be similar to a forest preserve or wildlife sanctuary. This writer believes that there is simply no question that plaintiff's use of

the land is not similar to a forest preserve or wildlife sanctuary. Accordingly, the trial court was correct in holding that plaintiff's use does not comply with this section of the ordinance.

Plaintiff further argues that its use complies with the zoning ordinance under § 12.10(A), which provides:

> Any use lawfully existing on the date of adoption of this ordinance or an amendment thereof and that is permitted as a conditional use under this ordinance or amendment shall be deemed a conforming use, and may continue without approvals required in this Article.

However, at the time the ordinance was passed, plaintiff's use of the land was not lawful. Rather, it was expressly determined by the court in the order in the 1967 case, issued on December 9, 1999, that plaintiff's use of the land was not lawful at the time, which was the time in which the ordinance was passed. Therefore, § 12.10(A) of the zoning ordinance does not apply here.

Accordingly, because plaintiff was not in compliance with the ordinance, it is not entitled to a declaration as such and the court was proper in granting summary disposition to defendant. Based on the same conclusion, the court was proper in granting summary disposition to defendant on its counter-claim for a declaration that plaintiff was in violation of the ordinance.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Bill Schuette